

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HENRY ASH and JEANNIE ASH

PLAINTIFFS

VS.

CIVIL NO. 3:97CV70-D-A

TRIGON BLUE CROSS BLUE SHIELD and
WILSON TRUCKING CORPORATION

DEFENDANT

MEMORANDUM OPINION

This cause comes before the court upon the motion of defendant Trigon Blue Cross Blue Shield (“Trigon”) to dismiss the plaintiffs’ claims against it. The plaintiffs have sued Trigon and defendant Wilson Trucking Corporation (“Wilson Trucking”) for benefits allegedly due under a family health policy, for damages incurred as a result of the defendants’ alleged bad faith refusal to pay said benefits and for punitive damages. Trigon filed the present motion to dismiss asserting that (1) the plaintiffs’ state law claims are preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”), (2) the plaintiffs’ Complaint fails to state a cause of action under the appropriate sections of ERISA, and (3) Trigon is not a proper party to this action under ERISA. The parties have fully briefed the issues and this matter is ripe for resolution by the court.

FACTUAL BACKGROUND¹

Plaintiff Henry Ash is an employee of defendant Wilson Trucking. At all times relevant to this action, Wilson Trucking maintained a health care benefit plan for its employees. Trigon paid the claims, administered the plan and provided various other services for the plan and Wilson Trucking Corporation in the capacity of an insurance provider and carrier. Henry Ash obtained family health insurance coverage for his family through this plan and performed all conditions necessary to maintain the insurance policy.

In the fall of 1996, plaintiff Jeannie Ash gave birth to the plaintiffs’ child Brittany Ash. Due

¹In ruling on a motion to dismiss, the court must take as true the well-pleaded allegations in the complaint, and construe them in the light most favorable to the plaintiff. Truman v. United States, 26 F.3d 592, 594 (5th Cir. 1994). The court’s recitation of the facts of this case reflects this rule.

to complications with the pregnancy and delivery, Jeannie Ash was hospitalized on September 16, 1996 and October 14, 1996 through December 9, 1996. Upon birth, Brittany Ash encountered difficulties and was immediately transported to LeBonheur Childrens Medical Center in Memphis, Tennessee for emergency medical treatment. The plaintiffs subsequently incurred additional charges relating to such medical treatment. Under the belief that these bills were covered by his health insurance plan, Henry Ash requested payment of the benefits from the plan of both Trigon and Wilson Trucking. The defendants failed to remit payment under the plan and this suit ensued.

LEGAL DISCUSSION

STANDARD EMPLOYED FOR MOTION TO DISMISS

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(51 G.1984) "To qualify for dismissal under Rule 12(b)(6), a complaint must not face show on its face." Chik, 794 F.2d 970, see also Mihnev v. Adkins, 83 F.2d 921, 926 (51 G.1988), United States v. Uall, 625 F.2d 547, 549 (51 G.1980), see also 451 U.S. 1002 (a request for dismissal is proper if the request is based on the complaint's face). Id., see also Blackburn v. City of Miami, 42 F.3d 925, 931 (51 G.1995) ("Conducting an investigation is not a duty of a police officer if the officer is not a police officer.") While dismissal under Rule 12(b)(6) is not a dismissal by which the court is required to give rise to a cause of action in many cases, dismissal of a successful affirmative defense appears to be a dismissal. Chik, 794 F.2d 970, Kaiser Aluminum & Chemical v. American Shipbuilding, 677 F.2d 1045, 1050 (51 G.1982), see also 459 U.S. 1105.

Furthermore, Rule 12 states that

[I]f a motion is made for dismissal under Rule 12(b)(6), the court shall not be required to state in its opinion the reasons for its decision. The court shall, however, be required to state in its opinion the reasons for its decision if it is required to do so by the court's rules or by the court's order. The court shall, however, be required to state in its opinion the reasons for its decision if it is required to do so by the court's rules or by the court's order.

Fed.R.C.P. 12(b). Nevertheless, the court is permitted to state the reasons for its decision in its opinion. Id., see also Davis v. Bayes, 195 WL 6299, *7 n3 (51 G.), see also Chik, 794 F.2d 970, 15 F.3d 1338, 1343 n3 (51 G.1994). Even though a dismissal under Rule 12(b)(6) is not a dismissal by which the court is required to give rise to a cause of action in many cases, dismissal of a successful affirmative defense appears to be a dismissal.

II. APPLICATION

Trigon attached as an exhibit to its motion to dismiss a copy of the health benefits plan at issue in this action, the Wilson Trucking Corporation Employees Medical Insurance Benefits Plan. Exh. A att. Def.'s Mot. To Dismiss. The plaintiffs, however, did not attach any exhibits to their response to the defendant's motion. In light of the fact that Trigon labeled and presented its motion as one to dismiss pursuant to Rule 12(b)(6), the court shall consider it as such. Thus, the court shall

not consider the defendant's attached exhibits and shall exclude them.

In light of that ruling and the facts alleged in the plaintiffs' Amended Complaint, the court cannot hold at this juncture that the plaintiffs can prove no set of facts under which they could recover on their claims against Trigon. The defendant's motion to dismiss shall therefore be denied.

A separate order in accordance with this opinion shall issue this day.

THIS the ____ day of June 1997.

United States District Judge

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ORDER DENYING MOTION TO DISMISS

Pursuant to a memorandum opinion issued this day, the court upon due consideration of the defendant's motion to dismiss does not find the motion well taken and shall deny it. Therefore, it is hereby ORDERED that:

) the motion of defendant Trigon Blue Cross Blue Shield to dismiss the plaintiff's
claims against it is hereby DENIED.

SO ORDERED this ____ day of June 1997.

United States District Judge